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United States District Court
Eastern District of Washington
Honorable Rosanna Malouf Peterson

United States of America,

Plaintiff,

v.

Paulino Portillo-Orozco,

Defendant.

No: 2:20-CR-54-RMP

Motion to Dismiss Because
§ 1326 Violates the Fifth
Amendment

May 10, 2022 – 11:00 a.m.

1 Paulino Portillo-Orozco asks the Court to dismiss the indictment against him
2 because the crime he is charged with committing – 8 U.S.C. § 1326, commonly
3 known as “illegal re-entry” – violates the Equal Protection Clause of the Fifth
4 Amendment.

5 Mr. Portillo recognizes this issue has already come before this Court. In
6 September 2021, Marciano Munoz-De La O filed a motion to dismiss on the same
7 basis¹, and in December 2021, filed a reply to the Government’s response². On
8 January 28, 2022, this Court heard expert testimony from Professor Deborah S.
9 Kang, an Associate Professor of History at the University of Virginia, in addition to
10 argument from both parties regarding the motion to dismiss.³

11 For the purposes of judicial efficiency, we request this Court incorporate the
12 record – that is, the parts of the record regarding the motion to dismiss based on a
13 violation of Equal Protection – from Mr. Munoz-De La O’s case into Mr. Portillo-
14 Orozco’s case. We further request that this Court rely upon the briefing, testimony,
15 and argument from both parties in Munoz-De La O.⁴

16 For the same reasons as stated in Mr. Munoz-De La O’s case, this Court
17 should dismiss the indictment against Mr. Portillo-Orozco, as the illegal re-entry

18 ¹ See *United States v. Munoz-De La O*, 2:20-CR-134-RMP – ECF No. 61 (Motion to Dismiss).

19 ² See ECF No. 78 (Reply Memorandum).

³ See ECF No. 88 (Minute Entry).

⁴ The Government has no objection to this proposal.

1 statute violates the Equal Protection Clause of the Fifth Amendment.

2 Dated: April 19, 2022

3 Federal Defenders of Eastern
4 Washington and Idaho
Attorneys for Paulino Portillo-Orozco

5 s/Christina Wong
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9 **SERVICE CERTIFICATE**

10 I hereby certify that, on April 19, 2022, I electronically filed the foregoing
11 with the Clerk of the Court using the CM/ECF System, which will notify the
12 following: Michael J. Ellis, Assistant United States Attorney.

13 s/Christina Wong
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